

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

DECISION AND ORDER

02-CR-6131L

05-CV-6121L

v.

MELISSA PEARCE,

Defendant.

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Melissa Pearce (“Pearce”) has filed, *pro se*, a petition to vacate sentence pursuant to 28 U.S.C. § 2255. The petition is dismissed.

To obtain relief, Pearce must show that her conviction and sentence was imposed in violation of the Constitution and laws of the United States. Allegations concerning violations of federal law entitle Pearce to relief only if they involve a “fundamental defect that results in a complete miscarriage of justice.” *Davis v. United States*, 417 U.S. 333, 346 (1974). First of all, the petition is untimely. Section 2255 contains a one-year period of limitations concerning a motion attacking a sentence by a person in federal custody. Pearce’s petition was filed almost two years after the judgment of conviction in her case.

Pearce was directed to explain the delay, and she has failed to satisfactorily do so.


But, regardless of the timeliness issue, the petition must be dismissed because it fails to even allege that her conviction was obtained in violation of the United States laws or Constitution. In essence, the petition is simply a request to modify or reduce the sentence so that she can have more contact with her infant son, who was born while Pearce was incarcerated. Pearce has repeatedly sent correspondence to the Court to seek this relief. In sum, the petition makes no allegations that the conviction was obtained in violation of the United States Constitution and, therefore, it must be dismissed.

#### CONCLUSION

The petition of Melissa Pearce (Dkt. #26) to vacate the judgment and conviction pursuant to 28 U.S.C. § 2255 is dismissed.

I decline to issue a certificate of appealability because Pearce has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c).

IT IS SO ORDERED.

  
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DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
January 13, 2006.